



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FF09E21000 FXES1111090FEDR 234]

#### Endangered and Threatened Wildlife and Plants; 90-Day Findings for Four Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of petition findings and initiation of status reviews.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the southern population of bog turtle (*Glyptemys muhlenbergii*), Pedernales River Springs salamander (*Eurycea species 1.*), ghost orchid (*Dendrophylax lindenii*), and tall western penstemon (*Penstemon hesperius*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether the petitioned actions are warranted, in accordance with the Act.

**DATES:** These findings were made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats. Any information we receive during the course of our status reviews will be considered.

**ADDRESSES:** *Supporting documents:* Summaries of the basis for each of the petition findings contained in this document are available on <https://www.regulations.gov> under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

*Status reviews:* If you have new scientific or commercial data or other information concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the “Search” button. After finding the correct document, you may submit information by clicking on “Comment.” If your information will fit in the provided comment box, please use this feature of <https://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Submitted for a Status Review**, below).

**FOR FURTHER INFORMATION CONTACT:**

Species common name	Contact person
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Bog turtle, southern population	Janet Mizzi, Field Supervisor, Asheville Ecological Services Field Office, telephone 828–258–3939, <a href="mailto:janet_mizzi@fws.gov">janet_mizzi@fws.gov</a>
Pedernales River Springs salamander	Michael D. Warriner, Supervisory Fish and Wildlife Biologist, Austin Ecological Services Field Office, telephone 512–490–0057, x236, <a href="mailto:michael_warriner@fws.gov">michael_warriner@fws.gov</a>
Ghost orchid	Lourdes Mena, Florida Classification and Recovery Division Manager, Florida Ecological Services Field Office, telephone 904–460–4970, <a href="mailto:lourdes_mena@fws.gov">lourdes_mena@fws.gov</a>
Tall western penstemon	Craig Rowland, Acting State Supervisor, Oregon Fish and Wildlife Office, telephone 503–231–6179, <a href="mailto:craig_rowland@fws.gov">craig_rowland@fws.gov</a>

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Information Submitted for a Status Review**

You may submit your comments and materials concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats, by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review.

However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on <https://www.regulations.gov>.

## **Background**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (i.e., “list” a species), remove a species from the List (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)).

The five factors are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); and
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their

expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248, July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

### Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on <https://www.regulations.gov> under the appropriate docket number.

TABLE—INTERNET SEARCH INFORMATION FOR STATUS REVIEWS FOR FOUR SPECIES PETITIONED FOR FEDERAL LISTING

Common Name	Docket Number	URL to Docket on <a href="https://www.regulations.gov">https://www.regulations.gov</a>
Bog turtle, southern population	FWS-R4-ES-2022-0042	<a href="https://www.regulations.gov/docket/FWS-R4-ES-2022-0042">https://www.regulations.gov/docket/FWS-R4-ES-2022-0042</a>
Pedernales River Springs salamander	FWS-R2-ES-2022-0014	<a href="https://www.regulations.gov/docket/FWS-R2-ES-2022-0014">https://www.regulations.gov/docket/FWS-R2-ES-2022-0014</a>
Ghost orchid	FWS-R4-ES-2022-0041	<a href="https://www.regulations.gov/docket/FWS-R4-ES-2022-0041">https://www.regulations.gov/docket/FWS-R4-ES-2022-0041</a>

Tall western penstemon	FWS-R1-ES-2022-0071	<a href="https://www.regulations.gov/docket/FWS-R1-ES-2022-0071">https://www.regulations.gov/docket/FWS-R1-ES-2022-0071</a>
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## *Evaluation of a Petition To List the Southern Population of Bog Turtle*

### Species and Range

Bog turtle (southern population of *Glyptemys muhlenbergii*); Georgia, North Carolina, South Carolina, Tennessee, Virginia

### Petition History

On January 13, 2022, we received a petition from the Center for Biological Diversity (CBD), requesting that the southern population of the bog turtle (*Glyptemys muhlenbergii*) be listed as a threatened or an endangered species and critical habitat be designated for this species under the Act. On April 7, 2022, we received an additional petition from William Schultz requesting to join the CBD petition and that we list the southern population as threatened under the Act. Both petitions clearly identified themselves as such and included the requisite identification information for the petitioners, required at 50 CFR 424.14(c). This finding addresses these petitions.

### Evaluation of Information Summary

In 1997, we listed the northern distinct population segment (DPS) of bog turtle (62 FR 59605, November 4, 1997). We concluded that the southern population of bog turtle did not meet the definition of a threatened or endangered species; however, we listed the southern population as a threatened species due to similarity of appearance to the northern population.

After reviewing the current information provided by the petitioners, we have determined that substantial new information exists indicating the southern population of bog turtle may warrant listing under the Act. The petitioners provided credible information indicating that there are potential threats to the species within the southern population due to loss and degradation of wetland habitat. The petitioners also presented information suggesting that threats to the species include development, vehicles and roads, overutilization (i.e., poaching and collection for the pet

trade), disease and predation, invasive species, climate change, succession and lack of wetland management, and small population size and other biological factors as well as information suggesting that existing regulatory mechanisms may be inadequate to address these potential threats. We will fully evaluate these potential threats during our 12-month status review for the species.

#### Finding

We reviewed the petitions, sources cited in the petitions, and other readily available information. Based on our review of the petitions and readily available information, we find that the petitions present substantial scientific or commercial information indicating the petitioned entity may qualify as a DPS and that listing the southern population of bog turtle (*Glyptemys muhlenbergii*) as a threatened or endangered species may be warranted due to loss and degradation of wetland habitat (Factor A). The petitioners also presented information suggesting that development, vehicles and roads, overutilization (i.e., collection and poaching), disease and predation, invasive species, climate change, succession and lack of wetlands management, small population size and other biological factors may be threats to the southern population of bog turtle and regulatory mechanisms may be inadequate to address these potential threats (CBD 2022, pp. 30–49; Schultz 2022, pp. 3–7). We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act’s requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on these petitions and other information regarding our overview of the petitions can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2022-0042 under the Supporting Documents section.

#### *Evaluation of a Petition To List the Pedernales River Springs Salamander*

#### Species and Range

Pedernales River Springs salamander (*Eurycea species 1.*); Texas

#### Petition History



On September 20, 2021, we received a petition dated the same, from Save our Springs Alliance and Wimberley Valley Watershed Association, requesting that Pedernales River Springs salamander be emergency-listed as an endangered species or a threatened species and critical habitat be designated for this species under the Act. The Act does not provide for a process to petition for emergency listing; therefore, we are evaluating this petition under the normal process of determining if it presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

#### Evaluation of Information

The petitioner provided credible information indicating there are potential threats to the Pedernales River Springs salamander due to water quantity and quality degradation, physical modification of surface habitat, disease, predation, and limited range. The petitioner also provided credible information that the existing regulatory mechanisms may be inadequate to address these potential threats (Factor D). While we found that the petition provided documentation of one example of salamanders being stolen from a fish hatchery, there is no credible information to support overutilization impacts to the Pedernales River Springs salamander such that the species may warrant listing.

#### Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Pedernales River Springs salamander due to potential threats associated with the following: Water quantity and quality degradation and physical modification of surface habitat (Factor A); development activities leading to the introduction of predators and increased risk of disease (Factor C); and vulnerability due to the limited range of the species (Factor E).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2022-0014 under the Supporting Documents section.

### *Evaluation of a Petition To List the Ghost Orchid*

#### Species and Range

Ghost orchid (*Dendrophylax lindenii*); Florida and Cuba

#### Previous Federal Actions

On January 24, 2022, we received a petition from The Institute for Regional Conservation, the National Parks Conservation Association, and CBD requesting that the ghost orchid be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

#### Evaluation of Information Summary

The petitioner provided credible information indicating past and current threats to individuals of the species within multiple subpopulations due to habitat destruction and alteration through hydrological change (Factor A) and other natural or manmade factors such as hurricanes (Factor E). The petition also provided information about threats from recreation and competition from invasive plants (Factor A); poaching and overutilization of recreational areas (Factor B); pest insects (Factor C); sea level rise (Factor E); and overall declining subpopulation numbers (Factor E), although these claims were not evaluated for this finding. The petition also claimed that the existing regulatory mechanisms may be inadequate to address these potential threats (Factor D). We found that the petition provided documentation of potential threats currently occurring within the range of the ghost orchid, and these threats are likely to impact not only individual orchids but also multiple subpopulations, particularly with regard to changes in hydrology.

## Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the ghost orchid due to potential threats associated with habitat destruction and alteration through hydrological change. The petitioners also presented additional information regarding threats due to recreation and competition from invasive plants; poaching and overutilization of recreational areas; pest insects; and sea level rise and hurricanes. We will fully evaluate these other potential threats during our 12-month status review pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2022-0041 under the Supporting Documents section.

### *Evaluation of a Petition To List the Tall Western Penstemon*

#### Species and Range

Tall western penstemon (*Penstemon hesperius*) is an herbaceous perennial flowering plant found in wetlands in Washington County, Oregon, and Clark County, Washington.

#### Petition History

On December 4, 2020, we received a petition dated December 3, 2020, from CBD and the Native Plant Society of Oregon, requesting that tall western penstemon be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

#### Evaluation of Information

Tall western penstemon is a valid recognized taxon (Hitchcock and Cronquist 2018, p. 461) with a limited range in Washington County, Oregon, and Clark County, Washington. The

species is currently known from five sites, all of which occur on protected public lands. One small population appears to have been extirpated in 2009 as part of a road-widening project (Maffit 2012, p. 49). Although some additional populations may still exist outside of protected sites, any such populations would be vulnerable to ongoing development. The full historical range of the species is unknown, although substantially more suitable habitat likely occurred prior to large-scale habitat alteration for agriculture and urbanization in the Portland-Vancouver Metropolitan Area. Although the narrow range and limited number of populations of tall western penstemon on their own do not necessarily indicate that the species may be at risk of extinction now or in the foreseeable future, the petition presents substantial information indicating that the species faces ongoing potential risks associated with habitat alteration and conversion (Factor A), invasive species (Factor A), genetic isolation (Factor E), and climate change (Factor E).

#### Finding

We reviewed the petition, sources cited in the petition, and other readily available information. Based on our review of the petition regarding habitat loss or alteration due to wetland development and conversion to agriculture (Factor A), habitat alteration by invasive species (Factor A), effects of climate change (Factor E), and the possible inadequacy of existing regulatory mechanisms to address these threats (Factor D), we find that the petition presents substantial scientific or commercial information indicating that listing the tall western penstemon as a threatened or endangered species may be warranted. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2022-0071 under the Supporting Documents section.

#### Conclusion

On the basis of our evaluation of the information presented in the petitions under section

4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, and tall western penstemon present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

### **Authors**

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

### **Authority**

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

**Stephen Guertin,**  
*Acting Director,*  
*U.S. Fish and Wildlife Service.*

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